

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 52727

Petitioner:

ANTHONY HENDEN YERKOVICH,

v.

Respondent:

PITKIN COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 7, 2010, Louesa Maricle and MaryKay Kelley presiding. Petitioner was represented by Gregory S. Gordon, Esq. Respondent was represented by Christopher G. Seldin, Esq. Petitioner is protesting the 2009 classification and actual value of the subject property.

Dockets 52727 and 52724 were consolidated for purposes of the hearing only.

Subject property is described as follows:

**Stranahan-Wells Exemption, Lot 2 Woody Creek, Colorado
Pitkin County Schedule No. R003847**

The subject property has 15.478 acres with a 1,237 square foot residence built in 1971, a cabin with approximately 350 square feet, and a tree farm with an estimated 1,000 trees of multiple varieties.

Petitioners are requesting agricultural classification. Respondent assigned a value of \$3,249,200.00 for the subject property based on vacant land classification.

Mr. Yerkovich contended that agricultural classification is supported by the existence of a tree farm established in 2006. Following excavation, tilling, backfilling, irrigation and fencing, approximately 1,000 seedlings were planted and have been subsequently pruned, sprayed and weeded. The metered gravity-fed irrigation system is supplied by water shares from the Salvation Ditch, which is located on an adjoining parcel owned by Lake View Woody Creek,

LLC, of which Petitioner is a principal. Mr. Yerkovich, estimating that the for-profit tree farm encompasses 20% to 25% of the subject parcel's acreage, plans a harvest in 2011.

Mr. Yerkovich, referencing the Assessor's Reference Library (ARL), argued that its directives were met: trees were planted, cultivated, and fertilized with the primary purpose of obtaining a monetary profit as stated in § 39-1-102(1.6)(a)(I), C.R.S. ARL Vol. 3 5.29 (2006). Current use was agricultural.

Respondent's witness, Lawrence C. Fite, testified that vacant land classification is supported by the subject's current residential use. The tree farm, measured at 150 square feet (roughly half an acre) or three percent of the total acreage, is considered insignificant.

Mr. Fite presented a value of \$3,500,000.00 for the subject property based on the market approach. Three comparable sales ranged in sale price from \$2,300,000.00 to \$3,050,000.00 and in size from 1,252 to 2,981 square feet. After adjustments were made, the sales ranged from \$3,451,350.00 to \$3,633,550.00.

Mr. Fite argued that § 39-1-102(1.6)(a)(I), C.R.S. requires use as a tree farm for two years preceding the assessment year and the assessment year itself plus agricultural classification or eligibility for classification for ten years preceding the assessment year. Mr. Fite noted that neither statutory requirement was met. Also, the ARL requires harvesting for the primary purpose of a monetary profit; this directive has not been met.

Mr. Fite described the subject parcel as having tremendous potential for residential development. Three percent of total acreage does not qualify for agricultural classification under statutory requirements. Also, Petitioner did not present evidence of water rights from the adjacent parcel.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly classified and valued for tax year 2009.

The Board finds that statutory requirements for agricultural classification have not been met. According to the ARL, "Tree farms are typically agricultural operations which plant, cultivate and harvest trees for sale on a wholesale or retail basis. Inputs to the lands, e.g., fertilizer, pesticides or other cultivation activities, are indicators the land is being used as a farm as defined by § 39-1-102(3.5), C.R.S." and "Tree farms should generally receive agricultural land designation if they plant and grow trees in the soil, cultivate and fertilize the trees, and harvest and sell the trees on a regular basis. The land must also be used for the primary purpose of obtaining a monetary profit as stated in § 39-1-102(1.6)(a)(I), C.R.S." ARL Vol. 3 5.29 (2006).

The Board finds no proof of harvesting or monetary profit and concludes that the criteria necessary for agricultural classification have not been met. Classification for the subject parcel is determined to be vacant land for tax year 2009.

Petitioner provided no alternative sales data to Respondent's market approach based on vacant land classification.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

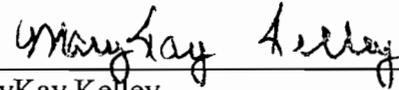
Section 39-8-108(2), C.R.S.

DATED and MAILED this 17 day of December 2010.

BOARD OF ASSESSMENT APPEALS

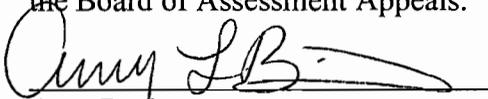


Louesa Maricle



MaryKay Kelley

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Amy Bryns